

**BEFORE SHRI BALBIR SINGH, ADJUDICATING OFFICER,  
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB  
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,  
MADHYA MARG, CHANDIGARH.**

Complaint No.ADC1304/2019  
Dated of Decision: 02.06.2021

1. Rashmi Arora wife of Anil Arora
2. Anil Arora son of Sh. S.S.Arora, residents of House No.4,  
Sri Niwas Colony, Rajwaha Road, Punjab.

.....Complainants

Versus

Country Colonisers Pvt. Ltd. Sector 85, SAS Nagar, (Mohali)  
District SAS Nagar (Mohali), Punjab.

.....Respondent

Complaint under Section 31 of the Real Estate  
(Regulation and Development) Act 2016.

Present: Shri J.P. Singla, Advocate, representative for the  
complainants  
Shri Tejeshwar Singh, Advocate, representative for  
the respondent

**ORDER**

1. Complainants Rashmi Arora and Anil Arora filed this  
complaint against respondent Country Colonisers Pvt  
Ltd seeking refund of the amount paid by them  
alongwith interest, compensation and litigation expenses  
under Section 31 of the Real Estate (Regulation and  
Development) Act 2016 (hereinafter to be referred as "the  
Act")
2. It was the case of the complainants that they booked  
with the respondent unit No.1203, Tower COSMOS in  
the project **WAVE ESTATE**, Sector 85, Mohali for a basic  
sale price of Rs.55,98,375/- and executed an agreement

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on 5.9.2012 (Annexure C1). The complainants deposited an amount of Rs.47,67,961/- with the respondent against the total sale consideration price of Rs.55,98,375/-. As per clause 5.1 of the said agreement, the possession of the unit in question was to be delivered to the complainants within 30 months from the date of execution of the agreement i.e. on or before 05.09.2015 (including grace period of six months), but, the respondent failed to deliver the possession of the unit to the complainants. Complainants served a legal notice to the respondent through their Advocate on 3.8.2017 (Annexure C2). Complainants filed a consumer complaint before the State Consumer Disputes Redressal State Commission, Punjab (hereinafter referred to as "**the State Commission**") on 10.11.2017 which was allowed to be withdrawn with liberty to file fresh with better particulars on 12.4.2018 (Annexure C3). Hence, this complaint.

3. Upon notice, respondent appeared through authorised representative and filed written reply raising the preliminary objections to the effect that the complaint was not maintainable because the RERA Act would not apply in this case, its application was prospective and not retrospective; that the complaint was liable to be dismissed as it was barred by the principle of res-judicata as the controversy in question of the present complaint stood adjudicated upon and decided by the Arbitrator on 17.5.2019 (Annexure R/5); that the

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complainants had not come with clean hands and they were indulging in forum shopping in order to harass and browbeat the respondent; the complainants were in habit of habitually delaying payments despite issuing demand notices as such they were not entitled for any relief; that the complainants were known property dealers and they invested the money for pecuniary benefits and they did not fall within the category of allottees or consumer; that the complainant and her husband had booked three additional apartment/units; that now there being slump in the property, the complainants were no longer interested in retaining the unit and filed this false complaint on flimsy grounds; that as per deed of settlement, there was no mandatory obligation on the part of the respondent to deliver possession within any fixed stipulated period, within which, the possession was to be offered to the complainants; that the State Government failed to acquire the land and 10% of the area of total land required for the entire project was not made available to the respondent on account of which laying of lines for basic services could not be completed; that the Greater Mohali Area Development Authority (GMADA) failed to provide external access roads to the project upon execution of land use agreements with the local farmers, but, the respondent of their own had made this arrangement and on this account the completion of the project had been delayed; that in the matter in hand,

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intricate questions of law were involved and as such it was required to be dealt with by the Civil Court; that the present complaint was not maintainable in view of the arbitration clause 9 of the allottee arrangement, as the matter was required to be decided by the arbitrator, under the agreement; that this Bench of Adjudicating Officer could only grant compensation and did not have jurisdiction to entertain and try this complaint as in this complaint refund and interest had been sought; and that the complainants had no cause of action to file the present complaint. On merits it is stated that the consideration of the apartment in question was Rs.55,98,375/- and total amount paid was Rs.47,43,627/- and Rs,24,334/- was paid towards delayed interest; it was denied that as per Clause 5.1 of the agreement the possession of unit was to be delivered within thirty months; Further, while denying the rest of of the averments of complaint, prayer was made for dismissal of complaint.

4. The violations and contraventions contained in the complaint were put to the representative for the respondent to which he denied and did not plead guilty and then the complaint was proceeded for further enquiry.
5. I have heard both the representatives for parties and have gone through the evidence brought by both sides on record.



6. The admitted facts in this case are that the complainants booked unit No.1203, Tower COSMOS in the project **WAVE ESTATE** of respondent situated in Sector 85, Mohali for a basic sale price of Rs.55,98,375/- and executed an agreement on 5.9.2012 and deposited an amount of Rs.47,67,961/- As per clause 5.1 of the said agreement, the possession of the unit in question was to be delivered to the complainants within twenty four months plus an extended period of six months from the date of execution of the agreement i.e. by 05.09.2015. It is also an admitted fact that possession had not been delivered so far.
7. The foremost argument on behalf of the respondent was that there was an arbitration clause, as specified in Clause 13 of the buyers' Agreement dated 5.9.2012 (Annexure C1) executed by the parties. According to which the dispute between the parties was to be resolved by reference to the Arbitrator. Further argument was that though the complainants initially filed the consumer complaint on 10.11.2017 before the State Commission on the same allegations against the respondent but the said complaint was dismissed as withdrawn vide order dated 12.4.2018 (Annexure C3). It was then argued that after the said withdrawal; on the basis of legal notice dated 3.8.2017 (Annexure C2) issued by the complainants, the matter was referred to the Arbitrator, who conveyed his consent and the arbitration proceedings commenced to the knowledge of

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the complainants, though the complainants opted not to join the said proceedings and finally the Arbitrator on conclusion of the proceedings announced the arbitration award dated 17.5.2019 (Annexure R5). Further submission was that on pronouncement of the award by the Arbitrator the complainants were left, only with the remedy either challenging the appointment of Arbitrator before the appropriate forum or by challenging the award before the Civil Court under Section 34 of the Arbitration and Conciliation Act, 1996 and that the present complaint was barred by the principle of resjudicata. In support of his contentions, representative for the respondent has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Wg Cdr. Arifur Rahman Khan and Aleya Sultana and others Vs.DLF Southern Homes Pvt Ltd***, Civil Appeal No.6303 of 2019; judgment of the State Consumer Disputes Redressal Commission Punjab passed in **Mr. Narinder Kumar Ahuja and another Vs. M/s Country Colonisers Private Limited** Consumer Complaint No.295 of 2018 and the judgment passed by the Chairperson, Real Estate Regulatory Authority, Punjab in **Shri Arvind Sharma and another Vs. M/s Country Colonisers Private Limited** complaint No.GC-1088 of 2018.

8. On the other hand the argument on behalf of the complainants was that due to fault of the respondent in not completing the project, within the stipulated period,

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legal notice dated 3.8.2017 (Annexure C2) was served upon the respondent for seeking refund, interest and compensation etc. but to no effect and thereupon the complainants filed the consumer complaint on 10.11.2017 before the State Commission against the respondent. It was argued that due to technical defect the said complaint was allowed to be withdrawn by the State Commission with liberty to file fresh complaint on the same cause of action, with better particulars within 15 days vide order dated 12.4.2018 (Annexure C3). It was then submitted that fresh consumer complaint was filed on 26.4.2018 within stipulated period, which however was subsequently allowed to be withdrawn by the State Commission with liberty to the complainants to avail their remedy before any other appropriate authority, except Consumer Fora, on the same cause of action vide order dated 16.10.2018 (Annexure R6). Another submission was that after withdrawal of the second complaint filed by the complainants from the State Commission with liberty to agitate their right before appropriate forum, the present complaint was filed by the complainants on 28.8.2019. Learned counsel for the complainants summed up his argument that consequent upon the default of the respondent, the complainants opted to invoke the jurisdiction of the State Commission for seeking redressal of their grievance against the respondent and the complaint before the State Commission was maintainable and the

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subsequent complaint having been filed on 26.04.2018 was in continuation of the earlier complaint as per permission granted by the State Commission and was pending adjudication between the parties, when the respondent surreptitiously issued letter dated 1.5.2018 (Annexure R2) for invoking arbitration clause of the agreement on the basis of the legal notice issued way back on 3.8.2017 (Annexure C2). Even though the Arbitrator consented for the arbitration but the complainants on coming to know of the said mischief, issued letter dated 9.5.2018(Annexure R4) agitating that invoking of Arbitration Clause at that stage was apparently with malafide intentions and was pure abuse of law and was totally illegal and unjustified. Further submission was that even though the Arbitrator continued with the arbitration proceedings in the absence of the complainants, despite pendency of the same matter before the State Commission and also announced the award dated 17.5.2019 (Annexure R5) however the matter could not have been legally referred to the Arbitrator, at that stage, during pendency of the same controversy between the parties in the competent Court of jurisdiction. Thus passing of the arbitration award would be of no consequence and would be vitiated and could not operate as resjudicata for the present litigation.

9. There is no dispute that the parties entered into buyers' agreement dated 5.9.2012(Annexure C2) which

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contained the arbitration clause in case of dispute between the parties. There is also no dispute between the parties that matter could be referred to the Arbitrator by invoking arbitration clause consequent upon serving of legal notice dated 3.8.2017 (Annexure C2) by the complainants alleging the fault of the respondent in not completing the project, within stipulated period, if the said clause had been invoked by the respondent immediately after serving of the legal notice dated 3.8.2017 (Annexure C2) and prior initiation of the proceedings before the State Commission. Even in the absence of the complainants joining the arbitration proceedings passing of the award by the Arbitrator would not have been valid and only recourse in that eventuality open to the complainants would have been either challenging the appointment of the Arbitrator before the competent Forum or to challenge the award before the Civil Court under Section 34 of the Arbitration and Conciliation Act, 1996. However, we find that the complainants on the basis of legal notice dated 3.8.2017 (Annexure C2) served upon the respondent to which no response was given, filed a complaint against the respondent in the State Commission for seeking redressal of the grievance of the case in hand and in the said complaint, the respondent appeared before the State Commission and the said complaint remained pending upto 12.4.2018 on which date it was allowed to be withdrawn with permission to file fresh complaint on

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the same cause of action within 15 days. It is also apparent from the order dated 16.10.2018 (Annexure R6) passed by the State Commission that fresh complaint on the same cause of action was filed by the complainants before the State Commission on 26.4.2018 and it remained pending upto 16.10.2018 on which date the same was allowed to be withdrawn with permission to avail their remedy before any other appropriate authority, except Consumer Fora. It could not be disputed between the parties and otherwise also law is well settled that the consumer complaint before the State Commission could be legally filed by the complainants for seeking redressal of their grievance of the case in hand, against the respondent and the said complaint was pending before the competent Court of jurisdiction on 1.5.2018 when the respondent mischievously thought of invoking arbitration clause, on the basis of legal notice issued way back on 3.8.2017 (Annexure C2) and when the matter came to the notice of the complainants they expressed their reservation and opposed that legally reference to the Arbitrator could not be made during pendency of the proceedings before the State Commission for the same controversy vide letter dated 12.5.2018 (Annexure R4). Therefore, once the complainants after serving legal notice upon the respondent had legally and validly opted the jurisdiction of the State Commission, which forum was competent to decide the controversy of the case in hand between the

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parties and the complaint before the State Commission was pending upto 16.10.2018 as is apparent from the order dated 26.10.2018 (Annexure R6) passed by the State Commission, action of the respondent in invoking the Arbitration Clause, on the basis of legal notice dated 3.8.2017 (Annexure C2) was totally illegal and unjustified and with ulterior motive. Therefore, despite Arbitrator having consented for the arbitration and proceeded with arbitration proceedings and pronounced the award dated 17.5.2019 (Annexure R5), the same would be of no consequence and would stand vitiated having no legal sanctity and invalid. The authorities cited on behalf of the respondents regarding question of resjudicata in view of the above discussion are not attracted to the facts of the present case and are distinguishable from the facts of the present case.

10. In view of above despite having valid arbitration clause in the buyers' agreement executed between the parties, the arbitration clause having been invoked much after the filing of the complaint before the competent Court of jurisdiction and during its pendency the said arbitration proceedings and passing of award by the Arbitrator on 17.5.2019 (Annexure R5) will not operate as res judicata for the present litigation.

11. Further objection taken on behalf of the respondent was that the present case pertained to the period prior to coming in to operation of the Real Estate (Regulation and Development) Act 2016 (hereinafter referred to as the

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Act). The argument, however, lacks merit because the project of the case in hand was not complete prior to coming into force of the Act and it was an ongoing project; and it is also settled law that the Act would certainly regulate the existing contracts, even though, it is prospective in nature, but, is retroactive also to some extent. On this point, reliance may be placed on the law laid down by the Hon'ble Bombay High Court in case titled as **Neel Kamal Realtors Suburban Pvt. Ltd and another Vs. Union of India and others**, bearing Writ Petition No.2737 of 2017 decided on 06.12.2017, wherein, it has been held that unilateral contracts of the prior period not being in accordance with the provisions of the Act are not enforceable to that extent and the provision of the Act would be applicable to cover up the ongoing project got registered with RERA Authority.

12.It was argued that in view of the decision of Hon'ble High Court of Punjab and Haryana delivered in *CWP No.8548 of 2020* titled as ***Janta Land Promoters Pvt Ltd Vs. Union of India and others*** and connected Civil Writ Petitions, this Bench had jurisdiction to deal with compensation part only, while the question of refund and interest could only be taken up before the Authority under the Act.

13.The argument does not carry much weight because the decision in ***Janta Land Promoters Pvt Ltd's case (supra)*** is based on the decision of Hon'ble High Court of Punjab and Haryana in *CWP No.38144 of 2018-*

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**Experion Developers Pvt Ltd Vs. State of Haryana and others** and connected appeals, under Haryana RERA and in the appeal against the said decision, the Hon'ble Supreme Court stayed the operation of decision of Hon'ble Punjab and Haryana High Court in relation to Haryana RERA. On the basis of the stay order of Hon'ble Apex Court, Ld. Authority of RERA Punjab, issued circular No. RERA/PB./LEGAL/24 dated 05.03.2021 relevant part of which runs as under:-

- “(i) Complaints falling under Section 18(1) of the Act, where the claim is only for return of the amount paid by the allottee and interest provided for in this Section, shall be dealt with by the Authority;*
- (ii) All cases, where the claim is for the return of the amount deposited by the allottee, interest thereon as mentioned at Sr. No.1 above and in addition, compensation (including payment of interest as compensation will be dealt with by the Adjudicating Officer;*
- (iii) All complaints falling under the proviso of Section 18(1) of the Act i.e. where the allottee does not intend to withdraw from the project, but, seeks interest for the period of delay in delivery of possession will continue to be heard by the Authority.*

*The above will apply with immediate effect to all pending complaints and to those to be received in future. In case of pending complaints, the matter will be transferred to the appropriate forum as indicated above, whenever the complaint is taken up for hearing. The matter will be reviewed once the decision of the Supreme Court of India in SLP No.13005 of 2020 is received.”*

14. In this view of the matter, the cases of refund, interest and compensation under the Act are maintainable before this Bench (of Adjudicating Officer).

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15. Another point agitated on behalf of the respondent was that the complaint was bad for non-impleading the co-buyer as complainant. The argument, however does not hold much water inasmuch as the buyer's agreement of the case in hand was between the respondent and the two buyers' and both the co-buyers have been associated in filing the present complaint. Therefore argument on behalf of the respondent is repelled.

16. It was also argued that the controversy between the parties in the present case was of intricate nature. The could only be decided by the Civil Court and not by the Adjudicating Officer. The argument however is without any substance inasmuch as Section 89 of the Act gives override effect to the provisions of the Act and the same runs as under:-

**"89.** The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

17. Apart from this jurisdiction of the Civil Court is also barred to entertain any suit or proceedings in respect of any matter which the authority or the Adjudicating Officer or the Appellate Tribunal is empowered by order under this Act to determine and Section 79 runs as under:-

**"79.** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any

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action taken or to be taken in pursuance of any power conferred by or under this Act.”

18. As has already been noticed this Bench has jurisdiction to entertain and try the controversy between the parties in the present litigation and Section 89 has been quoted above which give overriding effect to the provisions of the Act notwithstanding anything inconsistent therewith in any other law for the time being in force. Beside this Section 79 of the Act as quoted above bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter which the authority or the Adjudicating Officer is empowered by or under this Act to determine. It therefore cannot be said that the Civil Court can appropriately adjudicate the controversy between the parties in the present litigation.
19. Another objection on behalf of the respondent that the project got delayed due to the circumstances beyond the control of the respondent and it was the case of force majeure. It was also agitated that in fact the complainants had also not been regular in making the payments of the installments as per the stipulation and therefore, even if there had been delay in completion of the project, the complainants could claim delayed compensation as per stipulation in the buyers' agreement. It was also the argument that the project was completed and partial completion certificate (Annexure R26) was issued by the competent authority on 4.10.2019 and the occupancy certificate (Annexure

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R20) was issued on 16.10.2019. Further argument was that the offer of possession was made to the complainants vide letter dated 23.11.2019 (Annexure R19). Therefore, the complainants could not withdraw from the project and rather could claim compensation on account of delayed possession.

20. On the other hand argument on behalf of the complainants was that the complainants had been diligently making the payments as per the terms and conditions in the buyers' agreement and had paid more than 85% of the total amount of sale consideration but the fault was of the respondent in not offering the possession on or before 05.09.2015 (including grace period of six months) and unduly delayed the project.

21. Further argument was that it was not a case of force majeure as the respondent being builder should foresee as to what was to be done in the eventuality of concerned authorities not carrying out the process of acquisition as per agreement with the respondent for external development and providing connectivity to the project. It was agitated on behalf of the complainant that on failure of the respondent to complete the project and offer the possession as promised the complainants being buyers were at liberty to withdraw from the project and offer of possession in case had been made after the project had been delayed for a period of more than 4 years and that in any case the offer had been made, after filing of the present complaint and much after

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starting of the litigation, at the instance of the complainants initially with the State Commission i.e. on 10.11.2017. Further contention was that as the project had been delayed the complainants being buyers could not be compelled by the respondent builder to accept the possession. In support of contention reliance was placed upon ***Pioneer Urban Land & Infrastructure Ltd Vs. Govindan Raghavan, Civil Appeal No.12238 of 2018 and Pioneer Urban Land and Infrastructure Ltd Vs. Geetu Gidwani Verma and another civil appeal No.1677 of 2019.***

22. So far as the question of applicability of force majeure to the facts of the case in hand is concerned, as per explanation given in Section 7 of the Act, force majeure shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of real estate project. The said definition of force majeure makes it clear that it mostly covers natural disasters and the Act of God and not normal eventualities, which the builder can foresee with normal prudence and act accordingly rather than keeping the buyers in lurch and therefore principle of force majeure is not applicable to the facts of the present case.

23. Admittedly the project of the case in hand commenced in the year 2012 and was to be completed on or before 5.9.2015 (including grace period of six months). However, project had been delayed by more than 4 years.

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Therefore, the respondent cannot insist the complainants to make regular payments of the installments as project was not progressing further and the delay was attributed on the part of the respondent. Though it is a separate matter that the complainants had been making payment and admittedly more than 85% of total amount had been paid upto 18.6.2014 though the project was incomplete upto year 2019, therefore, it cannot be said that any fault was attributable on the part of the complainants and rather the respondent itself admitted the delay in completion of project.

24. So far as the question as to whether project had been completed and offer of possession had been made by the respondent is concerned though documents in the shape of partial completion certificate (Annexure R26) was issued by the competent authority on 4.10.2019 and the occupancy certificate (Annexure R20) was issued on 16.10.2019 and offer of possession vide letter dated 23.11.2019 (Annexure R19) are placed on record in support of the said plea but the project in question was to be completed on 5.9.2015 (including the grace period of six months) and the same had been delayed for more than 4 years. Moreover the litigation for claiming compensation after serving legal notice dated 3.8.2017 (Annexure C2) for withdrawing from the project was initiated in the year 2017 before the State Commission; and even the present complaint was filed

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on 28.8.2019 and moreover alleged letter of offer of possession had been issued after filing of the present complaint. However, law on this point is well settled that if the project has been delayed because of fault of the respondent-builder then the buyers cannot be compelled to accept delayed possession and it is optional for the buyers either to remain in project and accept delayed compensation or in the alternative to withdraw from the project and claim relief of refund, interest and compensation. Reference may be made to ***Pioneer Urban Land & Infrastructure Ltd Vs. Govindan Raghavan (supra) and Pioneer Urban Land and Infrastructure Ltd Vs. Geetu Gidwani Verma and another (supra).***

25. In view of the above discussion the complainants are not at fault and therefore the respondent was under obligation to provide possession of the unit in question within stipulated period. Clause 9.2 of the proforma of agreement of agreement prescribes the rights of the allottee in case of default by the promoter which runs as under:-

*9.2 In case of default by promoter under the conditions listed above, the allottee is entitled to the following:-*

*(i) stop making further payments to the promoter as demanded by the promoter. If the allottee stops making payments, the promoter shall correct the situation by*

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*completing the construction milestone and only thereafter the allottee will be required to make the next payment without any penal interest; or*

- (ii) the allottee shall have the option of terminating the agreement in which case the promoter shall be liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment/flat along with interest at the rate specified in the Rules within ninety days of receiving the termination notice;*

*Provided that where an allottee does not intend to withdraw from the project or terminate the agreement, he shall be paid by the promoter, interest at the rate specified in the Rules for every month of delay till the handing over of the possession of the apartment/flat.”*

26. Under this clause, the promoter is liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the office space along with interest at the rate specified in the Rules within ninety days.

27. In view of above discussed facts and circumstances of the case, the fault on the part of the respondent in not delivering the possession of the unit in question within the stipulated period as per the relevant clause of agreement dated 5.9.2012, thus, squarely falls within

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the provisions of Section 18 of the Act which runs as under:-

*“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”*

28. In view of the above discussion, the respondent were liable to refund the amount of Rs.47,67,961/- so paid by the complainants to them.

29. The next question which arises for consideration is as to whether the complainant is entitled to any interest on

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the amount paid by him to the respondent or not. The fact remains that the respondent had been using the amount so paid by the complainant since its payment for pecuniary gains, as such, the amount is required to be refunded alongwith interest to the complainant as similar benefit cannot be denied to the complainant. As such, I am of the view that the complainant is entitled the return of principal amount of Rs.47,67,961/- along with interest at the prescribed rate as per Rule 16 of the Act i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% from the respective dates of payments by the complainant till realization.

30. In the instant complaint, the complainant had to seek the remedy under the existing law. He has to undergo this litigative process by pursuing the matter and to spend money and for that obviously he had to suffer mental agony and harassment. The compensation has not been defined under this Act; however, it has been defined under some other statutes such like Workman Compensation Act, Land Acquisition Act etc etc. In my opinion, in the instant case, the compensation can be granted under the heads pecuniary and non-pecuniary and Section 72 of the Act speaks about the factors to be taken into consideration while adjudicating the quantum of compensation. No exact amount can be assessed on this count, but, keeping in view all the factors enunciated under Section 72 of the Act, in the instant case, the extent of mental agony and harassment can

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also be gauged in view of the above mentioned facts and especially prolonged delay in delivery of possession, I am of the considered view that the complainant is held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the tune of Rs.1,25,000/-.

31. In view of above discussions and observations, the complaint stands accepted to the following extent and heads:-

1.	Principal amount	Rs.47,67,961/-
2.	Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above said amount from the date of respective payments till realization
3.	On account of mental agony and litigation expenses	Rs.1,25,000/-

The respondent is directed to pay the above said amount to the complainant within sixty days from the date of this order. The amount if already paid by the respondent to the complainant on account of compensation for delay in delivery of possession shall be set off against above said amount. A copy of this order be sent to both the parties free of costs under Rules and file be consigned to record room after due compilation.

Dated:02.06.2021

  
 (Balbir Singh)  
 Adjudicating Officer  
 Real Estate Regulatory Authority